

ASSEMBLY BILL

No. 2696

Introduced by Assembly Member Krekorian

February 22, 2008

An act to amend Section 12076 of the Penal Code, and to amend Section 8103 of the Welfare and Institutions Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2696, as introduced, Krekorian. Firearms.

Existing law requires the Department of Justice to conduct background checks in connection with firearms purchases. Existing law provides that, to the extent funding is available, the department may participate in the National Instant Criminal Background Check System, as specified.

This bill would require the department to enter into a Memorandum of Understanding with the Federal Bureau of Investigation for the purpose of providing information to the National Instant Criminal Background Check System, and to participate in that system, as specified.

Existing law requires mental health facilities that admit persons on the basis of their being a threat to themselves or others, or for intensive treatment, to immediately report specified information to the Department of Justice in regards to those persons.

This bill would require, commencing January 1, 2011, that those reports be submitted electronically, as specified.

By imposing additional duties on local mental health facilities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12076 of the Penal Code is amended to
2 read:
3 12076. (a) (1) Before January 1, 1998, the Department of
4 Justice shall determine the method by which a dealer shall submit
5 firearm purchaser information to the department and the
6 information shall be in one of the following formats:
7 (A) Submission of the register described in Section 12077.
8 (B) Electronic or telephonic transfer of the information contained
9 in the register described in Section 12077.
10 (2) On or after January 1, 1998, electronic or telephonic transfer,
11 including voice or facsimile transmission, shall be the exclusive
12 means by which purchaser information is transmitted to the
13 department.
14 (3) On or after January 1, 2003, except as permitted by the
15 department, electronic transfer shall be the exclusive means by
16 which information is transmitted to the department. Telephonic
17 transfer shall not be permitted for information regarding sales of
18 any firearms.
19 (b) (1) Where the register is used, the purchaser of any firearm
20 shall be required to present clear evidence of his or her identity
21 and age, as defined in Section 12071, to the dealer, and the dealer
22 shall require him or her to sign his or her current legal name and
23 affix his or her residence address and date of birth to the register
24 in quadruplicate. The salesperson shall affix his or her signature
25 to the register in quadruplicate as a witness to the signature and
26 identification of the purchaser. Any person furnishing a fictitious
27 name or address or knowingly furnishing any incorrect information
28 or knowingly omitting any information required to be provided
29 for the register and any person violating any provision of this
30 section is guilty of a misdemeanor, provided however, that any
31 person who is prohibited from obtaining a firearm pursuant to

Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code who knowingly furnishes a fictitious name or address or knowingly furnishes any incorrect information or knowingly omits any information required to be provided for the register shall be punished by imprisonment in a county jail not exceeding one year or imprisonment in the state prison for a term of 8, 12, or 18 months.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is a private party transfer conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller or purchaser by the dealer, upon request. The dealer shall redact all of the purchaser's personal information, as required pursuant to paragraph (1) of subdivision (b) and paragraph (1) of subdivision (c) of Section 12077, from the seller's copy, and the seller's personal information from the purchaser's copy.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing

1 a fictitious name or address or knowingly furnishing any incorrect
2 information or knowingly omitting any information required to be
3 provided for the electronic or telephonic transfer and any person
4 violating any provision of this section is guilty of a misdemeanor,
5 provided however, that any person who is prohibited from
6 obtaining a firearm pursuant to Section 12021 or 12021.1 of this
7 code, or Section 8100 or 8103 of the Welfare and Institutions Code
8 who knowingly furnishes a fictitious name or address or knowingly
9 furnishes any incorrect information or knowingly omits any
10 information required to be provided for the register shall be
11 punished by imprisonment in a county jail not exceeding one year
12 or imprisonment in the state prison for a term of 8, 12, or 18
13 months.

14 (2) The record of applicant information shall be transmitted to
15 the Department of Justice in Sacramento by electronic or telephonic
16 transfer on the date of the application to purchase.

17 (3) The original of each record of electronic or telephonic
18 transfer shall be retained by the dealer in consecutive order. Each
19 original shall become the permanent record of the transaction that
20 shall be retained for not less than three years from the date of the
21 last transaction and shall be provided for the inspection of any
22 peace officer, Department of Justice employee designated by the
23 Attorney General, or agent of the federal Bureau of Alcohol,
24 Tobacco, Firearms, and Explosives upon the presentation of proper
25 identification, but no information shall be compiled therefrom
26 regarding the purchasers or other transferees of firearms that are
27 not pistols, revolvers, or other firearms capable of being concealed
28 upon the person.

29 (4) If requested, a copy of the record of electronic or telephonic
30 transfer shall be provided to the purchaser by the dealer.

31 (5) If the transaction is a private party transfer conducted
32 pursuant to Section 12082, a copy shall be provided to the seller
33 or purchaser by the dealer, upon request. The dealer shall redact
34 all of the purchaser's personal information, as required pursuant
35 to paragraph (1) of subdivision (b) and paragraph (1) of subdivision
36 (c) of Section 12077, from the seller's copy, and the seller's
37 personal information from the purchaser's copy.

38 (d) (1) The department shall examine its records, as well as
39 those records that it is authorized to request from the State
40 Department of Mental Health pursuant to Section 8104 of the

1 Welfare and Institutions Code, in order to determine if the
2 purchaser is a person described in Section 12021, 12021.1, or
3 subparagraph (A) of paragraph (9) of subdivision (a) of Section
4 12072 of this code or Section 8100 or 8103 of the Welfare and
5 Institutions Code.

6 (2) ~~To the extent that funding is available, the~~ The Department
7 of Justice ~~may~~ shall participate in the National Instant Criminal
8 Background Check System (NICS), as described in subsection (t)
9 of Section 922 of Title 18 of the United States Code, and, ~~if that~~
10 ~~participation is implemented, shall be the point of contact for~~
11 ~~initiating a background check through NICS, in accordance with~~
12 ~~the Memorandum of Understanding entered into by the department~~
13 ~~and the Federal Bureau of Investigation for the purpose of~~
14 ~~implementing NICS and state and federal law regarding~~
15 ~~confidentiality. The department~~ shall notify the dealer and the chief
16 of the police department of the city or city and county in which
17 the sale was made, or if the sale was made in a district in which
18 there is no municipal police department, the sheriff of the county
19 in which the sale was made, that the purchaser is a person
20 prohibited from acquiring a firearm under federal law.

21 (3) If the department determines that the purchaser is a person
22 described in Section 12021, 12021.1, or subparagraph (A) of
23 paragraph (9) of subdivision (a) of Section 12072 of this code or
24 Section 8100 or 8103 of the Welfare and Institutions Code, it shall
25 immediately notify the dealer and the chief of the police department
26 of the city or city and county in which the sale was made, or if the
27 sale was made in a district in which there is no municipal police
28 department, the sheriff of the county in which the sale was made,
29 of that fact.

30 (4) If the department determines that the copies of the register
31 submitted to it pursuant to paragraph (3) of subdivision (b) contain
32 any blank spaces or inaccurate, illegible, or incomplete information,
33 preventing identification of the purchaser or the pistol, revolver,
34 or other firearm to be purchased, or if any fee required pursuant
35 to subdivision (e) is not submitted by the dealer in conjunction
36 with submission of copies of the register, the department may
37 notify the dealer of that fact. Upon notification by the department,
38 the dealer shall submit corrected copies of the register to the
39 department, or shall submit any fee required pursuant to subdivision
40 (e), or both, as appropriate and, if notification by the department

1 is received by the dealer at any time prior to delivery of the firearm
2 to be purchased, the dealer shall withhold delivery until the
3 conclusion of the waiting period described in Sections 12071 and
4 12072.

5 (5) If the department determines that the information transmitted
6 to it pursuant to subdivision (c) contains inaccurate or incomplete
7 information preventing identification of the purchaser or the pistol,
8 revolver, or other firearm capable of being concealed upon the
9 person to be purchased, or if the fee required pursuant to
10 subdivision (e) is not transmitted by the dealer in conjunction with
11 transmission of the electronic or telephonic record, the department
12 may notify the dealer of that fact. Upon notification by the
13 department, the dealer shall transmit corrections to the record of
14 electronic or telephonic transfer to the department, or shall transmit
15 any fee required pursuant to subdivision (e), or both, as appropriate,
16 and if notification by the department is received by the dealer at
17 any time prior to delivery of the firearm to be purchased, the dealer
18 shall withhold delivery until the conclusion of the waiting period
19 described in Sections 12071 and 12072.

20 (e) The Department of Justice may require the dealer to charge
21 each firearm purchaser a fee not to exceed fourteen dollars (\$14),
22 except that the fee may be increased at a rate not to exceed any
23 increase in the California Consumer Price Index as compiled and
24 reported by the California Department of Industrial Relations. The
25 fee shall be no more than is necessary to fund the following:

26 (1) (A) The department for the cost of furnishing this
27 information.

28 (B) The department for the cost of meeting its obligations under
29 paragraph (2) of subdivision (b) of Section 8100 of the Welfare
30 and Institutions Code.

31 (2) Local mental health facilities for state-mandated local costs
32 resulting from the reporting requirements imposed by Section 8103
33 of the Welfare and Institutions Code.

34 (3) The State Department of Mental Health for the costs resulting
35 from the requirements imposed by Section 8104 of the Welfare
36 and Institutions Code.

37 (4) Local mental hospitals, sanitariums, and institutions for
38 state-mandated local costs resulting from the reporting
39 requirements imposed by Section 8105 of the Welfare and
40 Institutions Code.

1 (5) Local law enforcement agencies for state-mandated local
2 costs resulting from the notification requirements set forth in
3 subdivision (a) of Section 6385 of the Family Code.

4 (6) Local law enforcement agencies for state-mandated local
5 costs resulting from the notification requirements set forth in
6 subdivision (c) of Section 8105 of the Welfare and Institutions
7 Code.

8 (7) For the actual costs associated with the electronic or
9 telephonic transfer of information pursuant to subdivision (c).

10 (8) The Department of Food and Agriculture for the costs
11 resulting from the notification provisions set forth in Section 5343.5
12 of the Food and Agricultural Code.

13 (9) The department for the costs associated with subparagraph
14 (D) of paragraph (2) of subdivision (f) of Section 12072.

15 (10) The department for the costs associated with funding
16 Department of Justice firearms-related regulatory and enforcement
17 activities related to the sale, purchase, loan, or transfer of firearms
18 pursuant to this chapter.

19 The fee established pursuant to this subdivision shall not exceed
20 the sum of the actual processing costs of the department, the
21 estimated reasonable costs of the local mental health facilities for
22 complying with the reporting requirements imposed by paragraph
23 (2) of this subdivision, the costs of the State Department of Mental
24 Health for complying with the requirements imposed by paragraph
25 (3) of this subdivision, the estimated reasonable costs of local
26 mental hospitals, sanitariums, and institutions for complying with
27 the reporting requirements imposed by paragraph (4) of this
28 subdivision, the estimated reasonable costs of local law
29 enforcement agencies for complying with the notification
30 requirements set forth in subdivision (a) of Section 6385 of the
31 Family Code, the estimated reasonable costs of local law
32 enforcement agencies for complying with the notification
33 requirements set forth in subdivision (c) of Section 8105 of the
34 Welfare and Institutions Code imposed by paragraph (6) of this
35 subdivision, the estimated reasonable costs of the Department of
36 Food and Agriculture for the costs resulting from the notification
37 provisions set forth in Section 5343.5 of the Food and Agricultural
38 Code, the estimated reasonable costs of the department for the
39 costs associated with subparagraph (D) of paragraph (2) of
40 subdivision (f) of Section 12072, and the estimated reasonable

1 costs of department firearms-related regulatory and enforcement
2 activities related to the sale, purchase, loan, or transfer of firearms
3 pursuant to this chapter.

4 (f) (1) The Department of Justice may charge a fee sufficient
5 to reimburse it for each of the following but not to exceed fourteen
6 dollars (\$14), except that the fee may be increased at a rate not to
7 exceed any increase in the California Consumer Price Index as
8 compiled and reported by the California Department of Industrial
9 Relations:

10 (A) For the actual costs associated with the preparation, sale,
11 processing, and filing of forms or reports required or utilized
12 pursuant to Section 12078.

13 (B) For the actual processing costs associated with the
14 submission of a Dealers' Record of Sale to the department.

15 (C) For the actual costs associated with the preparation, sale,
16 processing, and filing of reports utilized pursuant to subdivision
17 (l) of Section 12078 or paragraph (18) of subdivision (b) of Section
18 12071, or clause (i) of subparagraph (A) of paragraph (2) of
19 subdivision (f) of Section 12072, or paragraph (3) of subdivision
20 (f) of Section 12072.

21 (D) For the actual costs associated with the electronic or
22 telephonic transfer of information pursuant to subdivision (c).

23 (2) If the department charges a fee pursuant to subparagraph
24 (B) of paragraph (1) of this subdivision, it shall be charged in the
25 same amount to all categories of transaction that are within that
26 subparagraph.

27 (3) Any costs incurred by the Department of Justice to
28 implement this subdivision shall be reimbursed from fees collected
29 and charged pursuant to this subdivision. No fees shall be charged
30 to the dealer pursuant to subdivision (e) for implementing this
31 subdivision.

32 (g) All money received by the department pursuant to this
33 section shall be deposited in the Dealers' Record of Sale Special
34 Account of the General Fund, which is hereby created, to be
35 available, upon appropriation by the Legislature, for expenditure
36 by the department to offset the costs incurred pursuant to this
37 section, paragraph (1) and subparagraph (D) of paragraph (2) of
38 subdivision (f) of Section 12072, Sections 12083 and 12099,
39 subdivision (c) of Section 12131, Sections 12234, 12289, and
40 12289.5, and subdivisions (f) and (g) of Section 12305.

1 (h) Where the electronic or telephonic transfer of applicant
2 information is used, the department shall establish a system to be
3 used for the submission of the fees described in subdivision (e) to
4 the department.

5 (i) (1) Only one fee shall be charged pursuant to this section
6 for a single transaction on the same date for the sale of any number
7 of firearms that are not pistols, revolvers, or other firearms capable
8 of being concealed upon the person or for the taking of possession
9 of those firearms.

10 (2) In a single transaction on the same date for the delivery of
11 any number of firearms that are pistols, revolvers, or other firearms
12 capable of being concealed upon the person, the department shall
13 charge a reduced fee pursuant to this section for the second and
14 subsequent firearms that are part of that transaction.

15 (j) Only one fee shall be charged pursuant to this section for a
16 single transaction on the same date for taking title or possession
17 of any number of firearms pursuant to paragraph (18) of
18 subdivision (b) of Section 12071 or subdivision (c) or (i) of Section
19 12078.

20 (k) Whenever the Department of Justice acts pursuant to this
21 section as it pertains to firearms other than pistols, revolvers, or
22 other firearms capable of being concealed upon the person, the
23 department's acts or omissions shall be deemed to be discretionary
24 within the meaning of the California Tort Claims Act pursuant to
25 Division 3.6 (commencing with Section 810) of Title 1 of the
26 Government Code.

27 (l) As used in this section, the following definitions apply:

28 (1) "Purchaser" means the purchaser or transferee of a firearm
29 or a person being loaned a firearm.

30 (2) "Purchase" means the purchase, loan, or transfer of a firearm.

31 (3) "Sale" means the sale, loan, or transfer of a firearm.

32 (4) "Seller" means, if the transaction is being conducted pursuant
33 to Section 12082, the person selling, loaning, or transferring the
34 firearm.

35 (m) *Upon receipt of information demonstrating that a person*
36 *is prohibited from possessing a firearm pursuant to Section*
37 *922(d),(g), or (n) of Title 18 of the United States Code, the*
38 *Department of Justice shall report the name, date of birth, physical*
39 *description, and any other reasonably available identifying*
40 *information about the person, including fingerprint, to the National*

1 *Instant Criminal Background Check System Index, Denied Persons*
2 *Files, in accordance with the Memorandum of Understanding with*
3 *the Federal Bureau of Investigation regarding NICS.*

4 SEC. 2. Section 8103 of the Welfare and Institutions Code is
5 amended to read:

6 8103. (a) (1) No person who after October 1, 1955, has been
7 adjudicated by a court of any state to be a danger to others as a
8 result of a mental disorder or mental illness, or who has been
9 adjudicated to be a mentally disordered sex offender, shall purchase
10 or receive, or attempt to purchase or receive, or have in his or her
11 possession, custody, or control any firearm or any other deadly
12 weapon unless there has been issued to the person a certificate by
13 the court of adjudication upon release from treatment or at a later
14 date stating that the person may possess a firearm or any other
15 deadly weapon without endangering others, and the person has
16 not, subsequent to the issuance of the certificate, again been
17 adjudicated by a court to be a danger to others as a result of a
18 mental disorder or mental illness.

19 (2) The court shall immediately notify the Department of Justice
20 of the court order finding the individual to be a person described
21 in paragraph (1). The court shall also notify the Department of
22 Justice of any certificate issued as described in paragraph (1).

23 (b) (1) No person who has been found, pursuant to Section
24 1026 of the Penal Code or the law of any other state or the United
25 States, not guilty by reason of insanity of murder, mayhem, a
26 violation of Section 207, 209, or 209.5 of the Penal Code in which
27 the victim suffers intentionally inflicted great bodily injury,
28 carjacking or robbery in which the victim suffers great bodily
29 injury, a violation of Section 451 or 452 of the Penal Code
30 involving a trailer coach, as defined in Section 635 of the Vehicle
31 Code, or any dwelling house, a violation of paragraph (1) or (2)
32 of subdivision (a) of Section 262 or paragraph (2) or (3) of
33 subdivision (a) of Section 261 of the Penal Code, a violation of
34 Section 459 of the Penal Code in the first degree, assault with
35 intent to commit murder, a violation of Section 220 of the Penal
36 Code in which the victim suffers great bodily injury, a violation
37 of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of
38 the Penal Code, or of a felony involving death, great bodily injury,
39 or an act which poses a serious threat of bodily harm to another
40 person, or a violation of the law of any other state or the United

1 States that includes all the elements of any of the above felonies
2 as defined under California law, shall purchase or receive, or
3 attempt to purchase or receive, or have in his or her possession or
4 under his or her custody or control any firearm or any other deadly
5 weapon.

6 (2) The court shall immediately notify the Department of Justice
7 of the court order finding the person to be a person described in
8 paragraph (1).

9 (c) (1) No person who has been found, pursuant to Section 1026
10 of the Penal Code or the law of any other state or the United States,
11 not guilty by reason of insanity of any crime other than those
12 described in subdivision (b) shall purchase or receive, or attempt
13 to purchase or receive, or shall have in his or her possession,
14 custody, or control any firearm or any other deadly weapon unless
15 the court of commitment has found the person to have recovered
16 sanity, pursuant to Section 1026.2 of the Penal Code or the law of
17 any other state or the United States.

18 (2) The court shall immediately notify the Department of Justice
19 of the court order finding the person to be a person described in
20 paragraph (1). The court shall also notify the Department of Justice
21 when it finds that the person has recovered his or her sanity.

22 (d) (1) No person found by a court to be mentally incompetent
23 to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code
24 or the law of any other state or the United States, shall purchase
25 or receive, or attempt to purchase or receive, or shall have in his
26 or her possession, custody, or control any firearm or any other
27 deadly weapon, unless there has been a finding with respect to the
28 person of restoration to competence to stand trial by the committing
29 court, pursuant to Section 1372 of the Penal Code or the law of
30 any other state or the United States.

31 (2) The court shall immediately notify the Department of Justice
32 of the court order finding the person to be mentally incompetent
33 as described in paragraph (1). The court shall also notify the
34 Department of Justice when it finds that the person has recovered
35 his or her competence.

36 (e) (1) No person who has been placed under conservatorship
37 by a court, pursuant to Section 5350 or the law of any other state
38 or the United States, because the person is gravely disabled as a
39 result of a mental disorder or impairment by chronic alcoholism
40 shall purchase or receive, or attempt to purchase or receive, or

1 shall have in his or her possession, custody, or control any firearm
2 or any other deadly weapon while under the conservatorship if, at
3 the time the conservatorship was ordered or thereafter, the court
4 which imposed the conservatorship found that possession of a
5 firearm or any other deadly weapon by the person would present
6 a danger to the safety of the person or to others. Upon placing any
7 person under conservatorship, and prohibiting firearm or any other
8 deadly weapon possession by the person, the court shall notify the
9 person of this prohibition.

10 (2) The court shall immediately notify the Department of Justice
11 of the court order placing the person under conservatorship and
12 prohibiting firearm or any other deadly weapon possession by the
13 person as described in paragraph (1). The notice shall include the
14 date the conservatorship was imposed and the date the
15 conservatorship is to be terminated. If the conservatorship is
16 subsequently terminated before the date listed in the notice to the
17 Department of Justice or the court subsequently finds that
18 possession of a firearm or any other deadly weapon by the person
19 would no longer present a danger to the safety of the person or
20 others, the court shall immediately notify the Department of Justice.

21 (3) All information provided to the Department of Justice
22 pursuant to paragraph (2) shall be kept confidential, separate, and
23 apart from all other records maintained by the Department of
24 Justice, and shall be used only to determine eligibility to purchase
25 or possess firearms or other deadly weapons. Any person who
26 knowingly furnishes that information for any other purpose is
27 guilty of a misdemeanor. All the information concerning any person
28 shall be destroyed upon receipt by the Department of Justice of
29 notice of the termination of conservatorship as to that person
30 pursuant to paragraph (2).

31 (f) (1) No person who has been (A) taken into custody as
32 provided in Section 5150 because that person is a danger to himself,
33 herself, or to others, (B) assessed within the meaning of Section
34 5151, and (C) admitted to a designated facility within the meaning
35 of Sections 5151 and 5152 because that person is a danger to
36 himself, herself, or others, shall own, possess, control, receive, or
37 purchase, or attempt to own, possess, control, receive, or purchase
38 any firearm for a period of five years after the person is released
39 from the facility. A person described in the preceding sentence,
40 however, may own, possess, control, receive, or purchase, or

1 attempt to own, possess, control, receive, or purchase any firearm
2 if the superior court has, pursuant to paragraph (5), found that the
3 People of the State of California have not met their burden pursuant
4 to paragraph (6).

5 (2) (A) For each person subject to this subdivision, the facility
6 shall immediately, on the date of admission, submit a report to the
7 Department of Justice, on a form prescribed by the Department of
8 Justice, containing information that includes, but is not limited to,
9 the identity of the person and the legal grounds upon which the
10 person was admitted to the facility.

11 Any report prescribed by this subdivision shall be confidential,
12 except for purposes of the court proceedings described in this
13 subdivision and for determining the eligibility of the person to
14 own, possess, control, receive, or purchase a firearm.

15 (B) *Commencing January 1, 2011, facilities shall submit reports*
16 *required by this paragraph exclusively by electronic means, in a*
17 *manner prescribed by the Department of Justice.*

18 (3) Prior to, or concurrent with, the discharge, the facility shall
19 inform a person subject to this subdivision that he or she is
20 prohibited from owning, possessing, controlling, receiving, or
21 purchasing any firearm for a period of five years. Simultaneously,
22 the facility shall inform the person that he or she may request a
23 hearing from a court, as provided in this subdivision, for an order
24 permitting the person to own, possess, control, receive, or purchase
25 a firearm. The facility shall provide the person with a form for a
26 request for a hearing. The Department of Justice shall prescribe
27 the form. Where the person requests a hearing at the time of
28 discharge, the facility shall forward the form to the superior court
29 unless the person states that he or she will submit the form to the
30 superior court.

31 (4) The Department of Justice shall provide the form upon
32 request to any person described in paragraph (1). The Department
33 of Justice shall also provide the form to the superior court in each
34 county. A person described in paragraph (1) may make a single
35 request for a hearing at any time during the five-year period. The
36 request for hearing shall be made on the form prescribed by the
37 department or in a document that includes equivalent language.

38 (5) Any person who is subject to paragraph (1) who has
39 requested a hearing from the superior court of his or her county
40 of residence for an order that he or she may own, possess, control,

1 receive, or purchase firearms shall be given a hearing. The clerk
2 of the court shall set a hearing date and notify the person, the
3 Department of Justice, and the district attorney. The People of the
4 State of California shall be the plaintiff in the proceeding and shall
5 be represented by the district attorney. Upon motion of the district
6 attorney, or on its own motion, the superior court may transfer the
7 hearing to the county in which the person resided at the time of
8 his or her detention, the county in which the person was detained,
9 or the county in which the person was evaluated or treated. Within
10 seven days after the request for a hearing, the Department of Justice
11 shall file copies of the reports described in this section with the
12 superior court. The reports shall be disclosed upon request to the
13 person and to the district attorney. The court shall set the hearing
14 within 30 days of receipt of the request for a hearing. Upon
15 showing good cause, the district attorney shall be entitled to a
16 continuance not to exceed 14 days after the district attorney was
17 notified of the hearing date by the clerk of the court. If additional
18 continuances are granted, the total length of time for continuances
19 shall not exceed 60 days. The district attorney may notify the
20 county mental health director of the hearing who shall provide
21 information about the detention of the person that may be relevant
22 to the court and shall file that information with the superior court.
23 That information shall be disclosed to the person and to the district
24 attorney. The court, upon motion of the person subject to paragraph
25 (1) establishing that confidential information is likely to be
26 discussed during the hearing that would cause harm to the person,
27 shall conduct the hearing in camera with only the relevant parties
28 present, unless the court finds that the public interest would be
29 better served by conducting the hearing in public. Notwithstanding
30 any other law, declarations, police reports, including criminal
31 history information, and any other material and relevant evidence
32 that is not excluded under Section 352 of the Evidence Code, shall
33 be admissible at the hearing under this section.

34 (6) The people shall bear the burden of showing by a
35 preponderance of the evidence that the person would not be likely
36 to use firearms in a safe and lawful manner.

37 (7) If the court finds at the hearing set forth in paragraph (5)
38 that the people have not met their burden as set forth in paragraph
39 (6), the court shall order that the person shall not be subject to the
40 five-year prohibition in this section on the ownership, control,

1 receipt, possession or purchase of firearms. A copy of the order
2 shall be submitted to the Department of Justice. Upon receipt of
3 the order, the Department of Justice shall delete any reference to
4 the prohibition against firearms from the person's state mental
5 health firearms prohibition system information.

6 (8) Where the district attorney declines or fails to go forward
7 in the hearing, the court shall order that the person shall not be
8 subject to the five-year prohibition required by this subdivision
9 on the ownership, control, receipt, possession, or purchase of
10 firearms. A copy of the order shall be submitted to the Department
11 of Justice. Upon receipt of the order, the Department of Justice
12 shall, within 15 days, delete any reference to the prohibition against
13 firearms from the person's state mental health firearms prohibition
14 system information.

15 (9) Nothing in this subdivision shall prohibit the use of reports
16 filed pursuant to this section to determine the eligibility of persons
17 to own, possess, control, receive, or purchase a firearm if the person
18 is the subject of a criminal investigation, a part of which involves
19 the ownership, possession, control, receipt, or purchase of a
20 firearm.

21 (g) (1) No person who has been certified for intensive treatment
22 under Section 5250, 5260, or 5270.15 shall own, possess, control,
23 receive, or purchase, or attempt to own, possess, control, receive,
24 or purchase any firearm for a period of five years.

25 Any person who meets the criteria contained in subdivision (e)
26 or (f) who is released from intensive treatment shall nevertheless,
27 if applicable, remain subject to the prohibition contained in
28 subdivision (e) or (f).

29 (2) (A) For each person certified for intensive treatment under
30 paragraph (1), the facility shall immediately submit a report to the
31 Department of Justice, on a form prescribed by the department,
32 containing information regarding the person, including, but not
33 limited to, the legal identity of the person and the legal grounds
34 upon which the person was certified. Any report submitted pursuant
35 to this paragraph shall only be used for the purposes specified in
36 paragraph (2) of subdivision (f).

37 (B) *Commencing January 1, 2011, facilities shall submit reports*
38 *required by this paragraph exclusively by electronic means, in a*
39 *manner prescribed by the Department of Justice.*

1 (3) Prior to, or concurrent with, the discharge of each person
2 certified for intensive treatment under paragraph (1), the facility
3 shall inform the person of that information specified in paragraph
4 (3) of subdivision (f).

5 (4) Any person who is subject to paragraph (1) may petition the
6 superior court of his or her county of residence for an order that
7 he or she may own, possess, control, receive, or purchase firearms.
8 At the time the petition is filed, the clerk of the court shall set a
9 hearing date and notify the person, the Department of Justice, and
10 the district attorney. The People of the State of California shall be
11 the respondent in the proceeding and shall be represented by the
12 district attorney. Upon motion of the district attorney, or on its
13 own motion, the superior court may transfer the petition to the
14 county in which the person resided at the time of his or her
15 detention, the county in which the person was detained, or the
16 county in which the person was evaluated or treated. Within seven
17 days after receiving notice of the petition, the Department of Justice
18 shall file copies of the reports described in this section with the
19 superior court. The reports shall be disclosed upon request to the
20 person and to the district attorney. The district attorney shall be
21 entitled to a continuance of the hearing to a date of not less than
22 14 days after the district attorney was notified of the hearing date
23 by the clerk of the court. The district attorney may notify the county
24 mental health director of the petition, and the county mental health
25 director shall provide information about the detention of the person
26 that may be relevant to the court and shall file that information
27 with the superior court. That information shall be disclosed to the
28 person and to the district attorney. The court, upon motion of the
29 person subject to paragraph (1) establishing that confidential
30 information is likely to be discussed during the hearing that would
31 cause harm to the person, shall conduct the hearing in camera with
32 only the relevant parties present, unless the court finds that the
33 public interest would be better served by conducting the hearing
34 in public. Notwithstanding any other provision of law, any
35 declaration, police reports, including criminal history information,
36 and any other material and relevant evidence that is not excluded
37 under Section 352 of the Evidence Code, shall be admissible at
38 the hearing under this section. If the court finds by a preponderance
39 of the evidence that the person would be likely to use firearms in
40 a safe and lawful manner, the court may order that the person may

1 own, control, receive, possess, or purchase firearms. A copy of
2 the order shall be submitted to the Department of Justice. Upon
3 receipt of the order, the Department of Justice shall delete any
4 reference to the prohibition against firearms from the person's
5 state mental health firearms prohibition system information.

6 (h) For all persons identified in subdivisions (f) and (g), facilities
7 shall report to the Department of Justice as specified in those
8 subdivisions, except facilities shall not report persons under
9 subdivision (g) if the same persons previously have been reported
10 under subdivision (f).

11 Additionally, all facilities shall report to the Department of
12 Justice upon the discharge of persons from whom reports have
13 been submitted pursuant to subdivision (f) or (g). However, a report
14 shall not be filed for persons who are discharged within 31 days
15 after the date of admission.

16 (i) Every person who owns or possesses or has under his or her
17 custody or control, or purchases or receives, or attempts to purchase
18 or receive, any firearm or any other deadly weapon in violation of
19 this section shall be punished by imprisonment in the state prison
20 or in a county jail for not more than one year.

21 (j) "Deadly weapon," as used in this section, has the meaning
22 prescribed by Section 8100.

23 SEC. 3. If the Commission on State Mandates determines that
24 this act contains costs mandated by the state, reimbursement to
25 local agencies and school districts for those costs shall be made
26 pursuant to Part 7 (commencing with Section 17500) of Division
27 4 of Title 2 of the Government Code.